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REMARKS

Claims 1 – 7 are pending in the present Application. Claim 6 has been amended, and Claims 8 – 11 have been added, leaving Claims 1 – 11 for consideration upon entry of the present Amendment. No new matter has been introduced by these amendments. Reconsideration and allowance of the claims is respectfully requested in view of the above amendments and the following remarks.

Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

Claim 6 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the expression “the plane” is allegedly indefinite. Although “the plane thereof” is believed clear and definite, applicants have amended the claim to facilitate prosecution. Specifically, “said reinforcement structure is bowed out of the plane thereof” has been changed to “said reinforcement structure is bowed out of a plane of the reinforcement structure”. Reconsideration and withdrawal of this rejection are respectfully requested.

Claim Rejections Under 35 U.S.C. § 102(b)

Claims 1, 2, and 3, stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 5,868,080 to Wyler et al. Applicants respectfully traverse this rejection.

To anticipate a claim, a reference must disclose each and every element of the claim. *Lewmar Marine v. Varient Inc.*, 3 U.S.P.Q.2d 1766 (Fed. Cir. 1987).

The present application teaches and claims a pallet substructure. The pallet substructure comprises: a reinforcement structure, a foot member, and a gusset. The gusset is disposed in mechanical communication with the reinforcement structure and the foot member. (Claim 1)

Wyler et al. disclose reinforced plastic pallets with supporting ribs (22) and reinforcing bars (32). (e.g., see Figure 1) Wyler et al., however, at least fail to teach or suggest a gusset disposed in mechanical communication with the reinforcement structure and the foot member. The ribs relied upon by the Examiner as a gusset, are not in mechanical communication with the reinforcement structure and the foot member. Hence, Wyler et al., fail to teach at least one

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element of the present Claim 1. For at least this reason, the present claims are not anticipated by Wyler et al. Reconsideration and withdrawal of this rejection are respectfully requested.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 4 – 7 stand rejected under 35 U.S.C. § 103(a), as allegedly unpatentable over Wyler et al., in view of U.S. Patent No. 4,159,681 to Vandament. Applicants respectfully traverse this rejection.

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a *prima facie* case of obviousness, i.e., that all elements of the invention are disclosed in the prior art; that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references; and that the proposed modification of the prior art had a reasonable expectation of success, determined from the vantage point of the skilled artisan at the time the invention was made. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996). In the present instance, there is no motivation to combine these references, and, even combined, these references fail to teach all of the elements of the present claims.

Vandament discloses a pallet. The pallet comprises a “flexible arched member arranged between the upper and lower sheet members and secured in place by means of an adhesive insulating material... Means for engaging elongated tines of a fork lift... are formed beneath the ends of the arched member so that a load carried upon the pallet is transferred to the tines substantially through the arched member.” (Abstract)

The design of the pallet of Wyler et al. appears to be different from that of Vandament. Wyler et al. do not appear to have “[m]eans for engaging elongated tines of a fork lift... formed beneath the ends of the arched member so that a load carried upon the pallet is transferred to the tines substantially through the arched member.” The design and location of the reinforcement bars is different. There is no teaching, suggestion, motivation, or expectation of success of Wyler et al. replacing their reinforcing bars with the arched member and foam of Vandament.

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Merely because another pallet has used a different design is not, in and of itself, motivation to change the design of Wyler et al.

It is further noted that, as stated above, Wyler et al., at least fail to teach or suggest a gusset disposed in mechanical communication with the reinforcement structure and the foot member. (Claims 1 – 7 of the present application) Vandament fails to remedy the deficiency of Wyler et al., since Vandament also fails to teach or suggest a gusset disposed in mechanical communication with the reinforcement structure and the foot member. Hence, even combined, these references fail to teach or suggest all elements of the present claims. Reconsideration and withdrawal of this rejection are respectfully requested.

New Claims

Claims 8 – 11 have been added to further claim the invention.

Antecedent basis for Claims 8 and 11 can at least be found in Paragraph [0045] as originally filed.

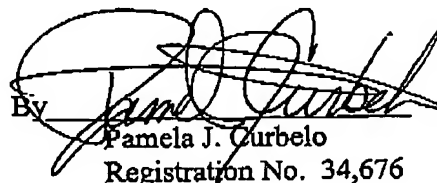
Antecedent basis for Claims 9 and 10 can at least be found in Figure 25.

It is believed that the foregoing amendments and remarks fully comply with the Office Action and that the claims herein should now be allowable to Applicants. Accordingly, reconsideration and allowance is requested.

If there are any additional charges with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130.

Respectfully submitted,

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